

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-030-14-1-5-01021-16
Petitioner: Claven-Clifford, Inc.
Respondent: Lake County Assessor
Parcel: 45-12-29-401-001.000-030
Assessment Year: 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated the 2014 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on February 18, 2014. The PTABOA failed to hold a hearing within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed the Form 131 petition directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o)
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on April 24, 2017. Neither the ALJ nor the Board inspected the property.
4. George J. Loxas, President of Claven-Clifford, Inc. was sworn as a witness for Petitioner. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, and Nicole Ooms, Ross Township Deputy Assessor, were sworn as witnesses for Respondent.

Facts

5. The subject property is a vacant 21.786 acre parcel located at 9005 Taft Street in Merrillville.¹
6. For 2014, the property was assessed at \$806,400.

¹ The only portion of the land at issue is a five acre section assessed as undeveloped/usable commercial land.

7. Petitioner contends the five acres at issue should be assessed at the agricultural rate and the total value of the property should be \$38,227.²

Record

8. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1:	Lease for the subject property with Lake County GIS survey and tract registration,
Petitioner Exhibit 2:	United States Department of Agriculture (“USDA”) Tract Registration,
Petitioner Exhibit 3:	Request for Preliminary Conference,
Petitioner Exhibit 4:	Rent payment notice from tenant,
Petitioner Exhibit 5:	Photograph of the subject property,
Petitioner Exhibit 6:	Photograph of the subject property,
Petitioner Exhibit 7:	Photograph of the subject property,

Respondent Exhibit 1:	GIS map of the subject property,
Respondent Exhibit 2:	State ruling on the property for 2002,
Respondent Exhibit 3:	Spreadsheet of comparable vacant land sales,
Respondent Exhibit 4:	Sales disclosure form for 45-12-28-277-004.000-030,
Respondent Exhibit 5:	Sales disclosure form for 45-12-22-251-001.000-030,
Respondent Exhibit 6:	Sales disclosure form for 45-12-24-251-006.000-046,
Respondent Exhibit 7:	Sales disclosure form for 45-12-19-328-012.000-030,
Respondent Exhibit 8:	Merrillville Zoning Map,
Respondent Exhibit 9:	Property record card (“PRC”),

Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Notice of Hearing,
Board Exhibit C:	Hearing sign-in sheet,

² During the hearing, Petitioner stated that he had a handout of his calculation arriving at the \$38,277 value. He indicated that it had not been labeled as an exhibit and that it was “just a mathematical thing.” He then asked the ALJ if he should label it as an exhibit or just hand it out. The ALJ responded “I’ll note for the record you mentioned seven exhibits. That would be eight if you’re numbering that one.” The exchange ended there and Petitioner never submitted the document and it never became part of the record.

c. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The parties agreed the assessed value did not increase by more than 5% from 2013 to 2014. Petitioner, therefore, has the burden of proof.

Summary of Parties' Contentions

14. Petitioner's case:
 - a. Petitioner is a real estate holding company whose activities are almost exclusively limited to buying, holding, and selling real estate. *Loxas testimony*.
 - b. The property is a 21.786 acre parcel of vacant land. Included therein are wetland areas which must be left protected and undisturbed. There are also trees and brush located on the land. Petitioner contends that the assessor assessed five acres as commercial even though there is no commercial activity on the parcel. The five acres

have not been improved or prepared for commercial development and Petitioner contends that they should be classified as non-tillable agricultural land. *Loxas testimony; Pet'r Exs. 1, 5-7.*

- c. Petitioner acquired the land at a tax sale in 2014. It contends that it did not buy the land with the intent to use the property for commercial purposes. Immediately thereafter, Petitioner negotiated a farm lease that began on February 18, 2014, with Richard Radu. He registered with the USDA to farm the tract for the 2014 season. *Loxas testimony; Pet'r Exs. 1 & 2.*
 - d. Petitioner contends the property should be assessed at \$38,227. Petitioner calculated that value using the state certified agricultural base rate for 2014, which was \$2,050 per acre, and applying the Real Property Assessment Guidelines developed by the Department of Local Government Finance ("DLGF"). According to Mr. Loxas, the calculation differs from Respondent's assessment because Petitioner is valuing the five acre portion as non-tillable agricultural land and not commercial land. *Loxas testimony.*
15. Respondent's case:
- a. Respondent contends the five acre portion of the property at issue is not being farmed. It contends that the property is zoned as commercial and is properly being assessed as undeveloped/usable commercial as opposed to agricultural. *Ooms testimony.*
 - b. Respondent's witness, Ms. Ooms, presented various sales of vacant land in Merrillville. She claims that the price per acre supports the assessed value of the five acre portion of the subject property at issue. *Ooms. Testimony; Resp't Exs. 3-7.*
 - c. Respondent contends that for 2002, the State ruled the five acres was assessed as commercial and the rest of the land was assessed as farmland. According to Ms. Ooms, nothing has changed since that ruling and the condition of the property is still the same. *Ooms testimony; Resp't Ex. 2.*

ANALYSIS

16. Petitioner made a prima facie case for a change in assessment. The Board reached that decision for the following reasons:
- a. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the DLGF to use distinctive factors such as soil productivity that do not apply to other types of land. Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net

- income from agricultural land. See 2011 GUIDELINES, Ch. 2 at 77-78; see also Ind. Code § 6-1.1-4-4.5(e) (directing the DLGF to use a six year, instead of a four-year, rolling average and to eliminate from the calculation the year for which the highest market value-in-use is determined). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.
- b. Ind. Code § 6-1.1-4-13(a) provides that “land shall be assessed as agricultural land only when it is devoted to agricultural use.” “Agricultural property” is defined as land “devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, Glossary at 1. Of course, agricultural land includes several types of non-tillable land.
 - c. Assessors are further directed that all acres enrolled in programs of the USDA, Farm Service Agency, and Natural Resources Conservation Service and have received a “farm number” are eligible for classification as “agricultural.” Those acres have been determined by those administering federal programs to be a part of an “agricultural operation.”
 - d. Petitioner offered evidence showing the property was used for agricultural purposes as well as evidence that all 21.786 acres were part of USDA Farm #1398. This evidence indicates that an agricultural classification is warranted and, as such, Petitioner established a prima facie case that the land should be classified as agricultural.
 - e. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. See *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach a petitioner’s case, a respondent has the same burden to present probative evidence that the petitioner faced to raise its prima facie case. *Fidelity Fed. Sav. & Loan v. Jennings Co. Ass’r*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
 - f. Respondent contends the property is correctly assessed as commercial land. Respondent argues that the five acres is not farmed and, because it is zoned commercial, it must be assessed as commercial. While zoning is relevant in determining whether property should be classified as commercial for assessment purposes, the weight of the evidence indicates that the entire parcel is leased for agricultural use. The fact that not every acre is tillable or suitable for productive use does not require a commercial classification.
 - g. Respondent’s witness, Ms. Ooms, identified sales of vacant land in Merrillville to purportedly support the assessed value. In making this argument, Respondent essentially relied on a sales comparison approach to establish the market value-in-use. See 2011 Real Property Assessment Manual at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on “sales of

comparable improved properties and adjust the selling prices to reflect the subject property's total value."); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). 821 N.E.2d 466, 469.

- h. To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- i. Respondent failed to address any differences between the subject property and the purportedly comparable properties. Respondent failed to show if the properties were similarly located or if they had access to utilities and to the typical infrastructure needed for commercial development. Consequently, Respondent made no meaningful comparison between the purportedly comparable properties and the subject property.
- j. Respondent further contends that, in a past state ruling, it was determined that the five acres in question were deemed to be commercial and that nothing has changed since then. In support of this contention, Respondent presented a Form 133 for the 2002 assessment date, a 1999 PRC, and a list of calculations.
- k. Respondent's documents appear to be attributable to a DLGF employee as shown by the signature on the Form 133. However, there is nothing in the record to show the basis for the commercial classification of the five acre portion of the subject property. Furthermore, each assessment and each tax year generally stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (*citing Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) ("Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. ... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later."). Similarly, Respondent's evidence here is not probative with regard to 2014.
- l. As a result, Respondent failed to rebut Petitioner's prima facie case that the land should be classified as agricultural. Therefore, the Board instructs Respondent to assess the five acre portion of property at issue as agricultural land at the appropriate rate.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the property should be assessed as agricultural land for 2014.

ISSUED: July 11, 2107

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.